

SOMMERS LAW GROUP
STEPHEN A. SOMMERS (SBN 225742)
JACOB W. SNIDER (SBN 236084)
870 Market Street, Ste. 1142
San Francisco, CA 94102
(415) 839-8569 (Tel)
(415) 956-0878 (Fax)
ssommers@sommerslaw.com

R. Randall Riccardo (Bar. No. 224672)
1459 18th Street, Ste. 186
San Francisco, CA 94107
(415) 215-2951 (Tel)
(415) 956-0878 (Fax)
randyr@bluemarlincorp.com

Attorneys for Plaintiff
PAUL MONTWILLO

ORIGINAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SI

PAUL MONTWILLO, an individual,

Plaintiff,

v.

WILLIAM TULL; DANIEL GIBBY; GIBBY
NOVELTIES LLC dba ARSENIC & APPLE
PIE, a California Limited Liability Corporation,
and DOES 1 through 20 inclusive,

Defendants,

C 07 3947

Case No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

PAUL MONTWILLO ("MONTWILLO" or "PLAINTIFF"), through his counsel, brings this action for copyright infringement against WILLIAM TULL ("TULL"), DANIEL GIBBY ("GIBBY"), GIBBY NOVELTIES LLC dba ARSENIC & APPLE PIE ("GIBBY NOVELTIES") and DOES 1 through 20 (hereinafter collectively referred to as "DEFENDANTS"),

MONTWILLO hereby alleges as follows:

I. JURISDICTION

1. This Court is the proper Court.
2. This Court has original jurisdiction over this action pursuant to pursuant to 28 U.S.C. §§1331, 1332 and 1338 (the "Copyright Act").
3. This Court has personal jurisdiction over the DEFENDANTS in that defendants resided and/or conduct business in this judicial district, the acts of infringement complained of herein are believed to have occurred in this judicial district, and the defendants otherwise can be found in this judicial district.
4. Venue is proper in the Court pursuant to 28 U.S.C. § 1391 because the DEFENDANTS reside in this judicial district and/or a substantial part of the events giving rise to the cause of action occurred in this judicial district.

II. PARTIES

5. Plaintiff MONTWILLO is an individual residing in the City and County of San Francisco, State of California.
6. MONTWILLO is informed and believes that defendants TULL and GIBBY reside and conduct business in Marin County, California.
7. GIBBY NOVELTIES LLC, doing business as Arsenic and Apple Pie, is a limited liability corporation organized and registered with the California Secretary of State (registration number 200719110109), and existing under the laws of California with its principal place of business in Marin County.

III. FACTUAL ALLEGATIONS

8. MONTWILLO created a line of novelty dolls (hereinafter "DOLL DESIGNS") in 1996. The DOLL DESIGNS were known by various names but many of them are

1 parodies of the famous Barbie dolls depicting the doll character in a variety of humorous
2 poses. These DOLL DESIGNS are wholly original to MONTWILLO and are
3 copyrightable subject matter pursuant to the laws of the United States.

4 9. MONTWILLO protected his DOLL DESIGNS through the procurement of U.S.
5 Copyright Registrations. MONTWILLO is the sole owner of the following valid and
6 subsisting United States Copyright Registrations:

- 7 a. U.S. Copyright Registration No. VA 1-271-342 for the work entitled "Trailer
8 Trash Doll";
9 b. U.S. Copyright Registration No. VAu 531-338 for the work entitled "Trailer
10 Trash Boy Doll";
11 c. U.S. Copyright Registration No. VA 1-271-343 for the work entitled "Blonde
12 Drag Queen Doll";
13 d. U.S. Copyright Registration No. VAu 631-337 for the work entitled "Talking
14 Pregnant Trailer Trash Doll"; and,
15 e. U.S. Copyright Registration No. VA 1-271-341 for the work entitled
16 "Redhead Drag Queen Doll".

17 10. These DOLL DESIGN copyrights, collectively referred to hereinafter as the
18 DOLL DESIGN COPYRIGHTS, are valid and subsisting and are incorporated herein as
19 if set forth in full.

20 11. True and correct copies of photographs of the DOLL DESIGNS, which are
21 protected by the DOLL DESIGN COPYRIGHTS, are attached hereto as EXHIBIT A.

22 12. Defendant TULL and MONTWILLO formed a partnership in 1997, to
23 manufacture, market and distribute the DOLL DESIGNS. In May, 2000, TULL and
24 MONTWILLO entered into a contract to form a limited liability corporation which was
25 called Arsenic & Apple Pie LLC. For four years Arsenic & Apple Pie LLC manufactured

1 and distributed novelty dolls based on the DOLL DESIGN COPYRIGHTS owned by
2 MONTWILLO.

3 13. Arsenic & Apple Pie LLC operated until June 25, 2004, at which time TULL
4 notified MONTWILLO that he was dissolving Arsenic & Apple Pie LLC pursuant to an
5 *ipso facto* clause in the contract governing Arsenic & Apple Pie LLC. After Arsenic and
6 Apple Pie LLC dissolved, defendants TULL and GIBBY formed GIBBY NOVELITES
7 LLC, and continued to sell novelty dolls which are identical in almost all respects to the
8 dolls subject of the DOLL DESIGN COPYRIGHTS owned by MONTWILLO.

9 14. DEFENDANTS, without authorization or license from MONTWILLO, continue
10 to manufacture, market, distribute and sell their line of INFRINGING DOLL DESIGNS
11 which are virtually exact reproductions of the DOLL DESIGNS owned by
12 MONTWILLO and subject to the DOLL DESIGN COPYRIGHTS.

13 15. True and correct copies of photographs of some of the DEFENDANTS'
14 infringing designs of dolls, which are identical in virtually all respects to
15 MONTWILLO's DOLL DESIGNS, and defendants' website of which the photos were
16 taken, are attached hereto as EXHIBIT B. DEFENDANTS' infringing doll designs
17 (hereinafter referred to as "INFRINGING DOLL DESIGNS") are virtually exact
18 reproductions of MONTWILLO's DOLL DESIGNS.

19 **IV. CAUSE OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **COPYRIGHT INFRINGEMENT**

22 16. MONTWILLO repeats and incorporates by this reference the allegations in
23 paragraphs 1 through 15, inclusive, as if set forth in full.

24 17. DEFENDANTS had access to the designs protected by the DOLL DESIGN
25 COPYRIGHTS prior to design and creation of its own INFRINGING DOLL DESIGNS.

18. DEFENDANTS copied the designs protected by the DOLL DESIGN COPYRIGHTS and have published, manufactured, marketed, distributed and sold the copied material as designs appearing in the INFRINGING DOLL DESIGNS.

19. DEFENDANTS' actions are willful, intentional, and purposeful, in disregard of MONTWILLO's exclusive ownership of the DOLL DESIGN COPYRIGHTS.

20. Because of the DEFENDANTS' activities, which are likely to continue to cause substantial and irreparable injury to PLAINTIFF, MONTWILLO is entitled to preliminary and permanent injunctive relief, damages and DEFENDANTS' profits pursuant to 17 U.S.C. §502 and 504(b) for each infringement. Alternatively, MONTWILLO is entitled to the maximum statutory damages, pursuant to 17 U.S.C. § 504 (C), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. §504(C). MONTWILLO is entitled to attorney's fees and costs pursuant to 17 U.S.C. §505.

V. PRAYER FOR RELIEF

21. WHEREFORE, MONTWILLO prays that:

1. DEFENDANTS and all their agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from DEFENDANTS, and each of them, be enjoined preliminarily and permanently, from:

- a. Manufacturing, distributing, marketing, selling or offering for sale any of the INFRINGING DOLL DESIGNS;
- b. otherwise using any of the DOLL DESIGN COPYRIGHTS owned by MONTWILLO.

2. DEFENDANTS be compelled to account to MONTWILLO for any and all profits derived by DEFENDANTS from the sale of the INFRINGING DOLL DESIGNS;

3. MONTWILLO be awarded all damages caused by the acts forming the basis of this complaint;

4. Alternatively, MONTWILLO reserves the right to recover statutory damages for DEFENDANTS willful copyright infringement pursuant to 17 U.S.C § 504(C);

5. DEFENDANTS be ordered to pay to MONTWILLO the costs of this action and their reasonable attorneys' fees pursuant to 17 U.S.C § 505;

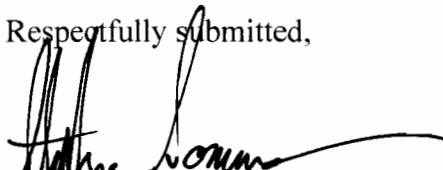
6. Based on DEFENDANTS' willful and deliberate infringement, and to deter such conduct in the future, MONTWILLO be awarded punitive damages;

7. DEFENDANTS be ordered to pay MONTWILLO prejudgment interest;

8. MONTWILLO obtain such other and further relief as the Court may deem just and proper.

DATED: August 1, 2007

Respectfully submitted,


R. RANDALL RICCARDO
STEPHEN A. SOMMERS
JACOB W. SNIDER
Attorneys for Plaintiff
PAUL MONTWILLO



Talking Pregnant Trailer Trash Doll: Copyright No.
VAu 531-338



Redhead Queen Doll; Copyright No. 271-341



Blonde Drag Queen Doll: Copyright No. VA 1271-343



Trailer Trash Doll; Copyright No. 1-271-342



Trailer Trash Boy Doll: Copyright
No. VAu 531-338



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TRAILER TRASH DOLL (Little Miss Guzzler!)

The centerpiece of our collection, the Trailer Trash Doll returns looking as good as ever! The new SECOND EDITION doll also known as "Little Miss Guzzler" features longer Platinum Blonde braids with dark roots, a checkerboard halter top, cut-off shorts, and taller Red cowboy boots. She has a cigarette dangling out of her snaggle-toothed mouth, holding a six-pack of generic beer (after all she did win the title of "Little Miss Guzzler" at the county fair!), she is a sight to behold! Standing at 11 1/2" tall she is a must for your collection and a great addition to the first edition doll! She is presented in a classy window box and ships in a cardboard gift box suitable for wrapping. Do not forget to order separately overnight or 2 day shipping if required by clicking on the Expedited Shipping link above. Please request a complimentary gift bag if required with your order.



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PLEASE NOTE THAT WE ARE PERMANENTLY SOLD OUT OF THE NEW RED HEAD AND BLONDE DRAG QUEEN DOLLS AS THEY HAVE BEEN DISCONTINUED!

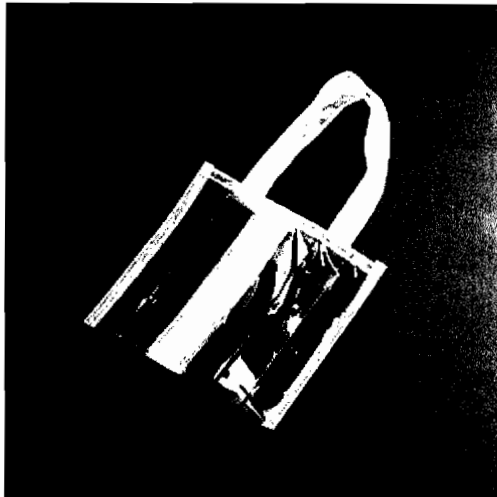
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